

§ 1309.6 Is the normal operation or statutory objective of any program or activity an exception to the rules against age discrimination?

A recipient is permitted to take an action, otherwise prohibited by § 1309.5, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) It is impractical to measure the other characteristic(s) directly on an individual basis.

§ 1309.7 Is the use of reasonable factors other than age an exception to the rules against age discrimination?

A recipient is permitted to take an action otherwise prohibited by § 1309.5 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 1309.8 Who has the burden of proving that an action is excepted?

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 1309.6 and 1309.7 is on the recipient of financial assistance from TVA.

§ 1309.9 How does TVA provide financial assistance in conformity with the Act?

(a) TVA contributes financial assistance only under agreements which contain a provision which specifically requires compliance with the Act and this part. If the financial assistance involves the furnishing of real property, the agreement shall obligate the recipient, or the transferee in the case of a subsequent transfer, for the period during which the real property is used for a purpose for which the financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where the financial assistance involves the furnishing of personal property, the agreement shall obligate the recipient during the period for which ownership or possession of the property is retained. In all other cases the agreement shall obligate the recipient for the period during which financial assistance is extended pursuant to the agreement. TVA shall specify the form of the foregoing agreement, and the extent to which an agreement shall be applicable to subcontractors, transferees, successors in interest, and other participants.

(b) In the case of real property, structures or improvements thereon, or interests therein, acquired through a program of TVA financial assistance, or in the case where TVA financial assistance was provided in the form of a transfer by TVA of real property or an interest therein, the instrument effecting or recording the transfer of title shall contain a covenant running with the land assuring compliance with this part and the guidelines contained herein for the period during which the real property is used for a purpose for which the TVA financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property is involved, but property is improved with TVA financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained by transfer from TVA, the covenant against discrimination may also include a condition coupled with a right to be reserved by TVA to revert title to the property in the event of a